

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON DIVISION

KELLI SMITH, individually and on behalf of a class of similarly situated female employees, RACHEL MOUNTIS, AMY SHURSKY and KATE WHITMER,) Docket No. 3:13-cv-02970-MAS-LHG
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)
Plaintiffs,) Courtroom No. 7E
) Clarkson S. Fisher Building
versus) & U.S. Courthouse
) 402 East State Street
MERCK & CO., INC.,) Trenton, New Jersey 08608
)
Defendant.) August 10, 2015
) 11:09 a.m.

TRANSCRIPT OF TELEPHONE CONFERENCE RE: DISCOVERY DISPUTE
BEFORE HONORABLE LOIS H. GOODMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 TRENTON, NEW JERSEY AUGUST 10, 2015 11:09 A.M.

2 (Call to order of the Court)

3 THE COURT: All right. Good morning, Counsel. We're
4 on the record in Smith, et al. versus Merck and Co., Docket 13-
5 2970.

6 Can I have the appearances for the record, please?

7 MS. MARCUSE: Deborah Marcuse, Andrew Melzer and
8 David Tracey for plaintiffs.

9 THE COURT: Thank you.

10 MS. KATZENSTEIN: Chrissy Katzenstein and Cailin
11 Heilig for defendant Merck and Company.

12 THE COURT: All right. Ms. Katzenstein, I am going
13 to ask you to speak up a little when you speak.

14 I am also going to ask you when you speak to please
15 state your name. Just in case someone gets a transcripts, you
16 are not driving the transcriber crazy trying to figure out
17 whose voice it is. Okay?

18 MS. KATZENSTEIN: Right.

19 THE COURT: All right. Now I have a discovery
20 dispute that was submitted to me, there were actually several.
21 But I was very pleased to hear that some of them were resolved
22 by stipulation, and I congratulate you on that and thank you.

23 What remains was submitted to me by letter dated July
24 10, 2015, that was sent in by plaintiff. And I got a response
25 dated July 16, 2015 from defendant.

1 And it seems to me there are really two issues here,
2 but I am going to ask you to clarify. Because I will tell you,
3 quite honestly and rather bluntly, I have read these letters,
4 and I have read them again, and I have read them again. And I
5 still am not clear exactly what it is plaintiff is asking for.
6 And now I am referring to the first part of it, the 2009 data
7 that plaintiff says they are looking for.

8 The second component is an update of what defendant
9 has already produced to bring it up-to-date, and we will deal
10 with that separately.

11 But with regard to 2009, I certainly got the
12 impression from plaintiffs' letter that nothing had been
13 produced for 2009. And I started this before we went on the
14 record by saying I felt like it was almost two different cases
15 we are talking about because defendant says they have, in fact,
16 produced data for 2009, just a certain limited subset that has
17 not been produced.

18 And it might have been helpful to get a reply on
19 this. Because, frankly, I have no idea as we sit here today
20 what it is that plaintiffs are looking for in this first
21 component of the discovery, and why they are entitled to it.
22 Because, frankly, the letter does not tell me.

23 So who is going to speak for plaintiff?

24 MS. MARCUSE: This is Deborah Marcuse; I will, Your
25 Honor.

1 THE COURT: Thank you.

2 MS. MARCUSE: I am actually a little bit unclear
3 about what defendants are representing that they have produced.
4 But my understanding is that what we are -- what I know that we
5 are seeking is full employment data for the year 2009. And my
6 understanding of what is in the data that defendants have
7 produced to date is full information from 2010, January, 2010
8 until July, 2014.

9 Now that includes some information about individuals
10 who were employed at Merck during 2009, and who continue to be
11 employed at Merck from 2010 forward. But it does not -- and I
12 think defendants acknowledge this -- include information for
13 individuals -- it's simply not the full pay data for the year
14 2009.

15 So I'll start with that understanding, and then let
16 you hear from defendants if they believe that that's not an
17 accurate representation.

18 THE COURT: Well, I will tell you, I read their
19 letter, and I am assuming you read their letter also. And what
20 struck me was that they say that -- and I am looking at Page 3
21 of their letter. They say, "Plaintiffs" -- this is a quote,
22 "Plaintiffs are seeking to compel 'complete employment and pay
23 data for class and collective members and their male
24 counterparts.'" End of quote.

25 And Merck goes on to say they have produced the

1 complete employment and pay data for that population through
2 July, 2014. What they say is if someone was hired before that
3 year, they have produced everything for those people.

4 So what they are suggesting, and what I am asking you
5 to respond to, is that the only exception is for people who
6 left Merck's employ in 2009.

7 And feel free to jump in, Ms. Katzenstein and Ms.
8 Heilig, whoever wants to speak for defendant, if I am getting
9 that wrong. But I am taking that straight out of the letter.
10 And I am looking for whatever the nuance is. What is it that I
11 am missing here?

12 MS. MARCUSE: Your Honor, two points, I believe, just
13 briefly.

14 THE COURT: Who is speaking?

15 MS. MARCUSE: And this is Deborah Marcuse.

16 THE COURT: Please identify yourself when you speak.
17 Excuse me? Could you repeat that? Please identify yourself
18 when you speak.

19 MS. MARCUSE: Yes. This is Deborah Marcuse for
20 plaintiffs.

21 I'm looking at Page 3 and there, Merck states that
22 they do not believe plaintiffs are entitled to data for any
23 individual who left Merck's employ before December 16th, 2010.

24 We have a difference of opinion on the question
25 whether we are entitled to -- we're looking at the following

1 paragraph. The claim from Merck is that plaintiff Smith's
2 individual EPA claim was the only claim that was tolled between
3 June, 2012 and May, 2013. As we've stated in our letters, we
4 disagree on that point. So we believe that the -- the EPA
5 period goes back considerably further.

6 So, yes, we are asking for the data for certainly all
7 individuals employed in 2010, which, despite the fact like --
8 despite the fact that Merck says we're not entitled to it, my
9 understanding is that Merck has produced that data. Chrissy,
10 is that accurate?

11 MS. KATZENSTEIN: We have produced the data for all
12 of the class and collective action members in the population
13 from -- as that would exist from December 1st, 2010.

14 MS. MARCUSE: Okay. Well, then we're actually
15 missing substantially more than we even understood that we were
16 missing. So we are then missing -- we are looking for
17 information for all of the individuals who are employed by
18 Merck from January 1st, 2009 through the present.

19 So I believe what we do not have then is data for all
20 the individuals employed who left Merck between -- who worked
21 at Merck sometime between January 1st, 2009 and December 1st,
22 2010, but who left the company before or on December 1st,
23 2010.

24 MS. KATZENSTEIN: And this is --

25 MS. MARCUSE: And that is based on our interpretation

1 of a tolling agreement that we, I believe, outlined in our
2 original letter to the Court. I believe we outlined it in our
3 conditional certification letter, as well. As well as our
4 understanding that we are entitled to full data for the entire
5 period from 2009 forward, even should the Court ultimately
6 determine that the only individuals included in the class are
7 those who come later. That determination has not yet been
8 made. And so where there is a dispute, we believe we are
9 entitled to the data.

10 MS. KATZENSTEIN: And this is Chrissy Katzenstein,
11 Your Honor.

12 If I may just go back to the question that you posed
13 about the data that's been produced. And that Your Honor is
14 correct, the data that Merck produced is data for anybody
15 falling within the class, and every piece of data that's
16 available in our SAP system throughout that person's
17 employment.

18 So to the extent that somebody was employed at Merck
19 in 2009 and continues to be employed during the class period,
20 that data has been produced to plaintiffs at this point. So
21 really the dispute relates only to individuals who are not part
22 of the class, and who have no exposure or liability with
23 respect to those individuals.

24 Ms. Marcuse just referenced a tolling agreement that
25 plaintiffs contend would extend the EPA class period back

1 earlier into 2010. Merck has made clear that that is not how
2 we interpret the tolling agreement. There is nothing in that
3 tolling agreement that suggests that the claims of EPA opt-ins
4 were tolled during that period. That agreement related only to
5 named plaintiff, Kelli Smith.

6 So we contend that at the very earliest, the EPA
7 class period cannot start until 2011. Accordingly that, too,
8 is completely encompassed by the data that has been produced up
9 to this point.

10 MS. MARCUSE: In the tolling agreement -- sorry.
11 This is Deborah Marcuse.

12 In the tolling agreement, there is Paragraph 2 that I
13 believe we've cited in our prior filings on conditional
14 certification that notes that all of Merck's potential
15 counterclaims against plaintiff or potential class members are
16 tolled. That expressly contemplates potential class members
17 and would not make any sense if the entire agreement did not
18 expressly contemplate potential class members, as well as Kelli
19 Smith.

20 MS. KATZENSTEIN: And if I may respond, this is
21 Chrissy Katzenstein.

22 I think that we're kind of merging two distinct
23 concepts in terms of class members versus collective action
24 members. The tolling agreement -- for Title VII purposes, the
25 claims of class members toll from the charge filing date, and

1 were tolled pursuant to this tolling agreement.

2 However, for EPA purposes, a claim statute continues
3 to run for the collective class until those individuals opt in.
4 So there's two different class members, and it references with
5 respect to class members, the agreement is completely silent
6 with respect to both claims and counterclaims for collective
7 class members.

8 MS. MARCUSE: Since those are -- sorry. This is
9 Deborah Marcuse.

10 Since those are overlapping categories and it is not
11 specific -- the tolling agreement is not specific as to
12 exclusively claims relating to Title VII are claims flowing
13 from the EPA, that argument doesn't really make sense to us.

14 But, again, where there's a dispute, we believe that
15 we are entitled to the data going back.

16 Moreover, since the pay liability period under Title
17 VII also goes back through the beginning of 2009, we believe we
18 are entitled to look. Even if it were the case that only
19 individuals who are subsequently employed by Merck would be --
20 who are employed by Merck after 2009 would ultimately be able
21 to collect, we are still entitled to see the full pay data for
22 all the individuals to whom those people are being compared so
23 that we can understand the disparities in their total context.

24 MS. KATZENSTEIN: This is --

25 THE COURT: I have a question here that concerns me.

1 Right now, we are doing discovery as to the named plaintiff,
2 and for the collective action and the class certification
3 motions. How does the 2009 data that you're talking about
4 relate to the plaintiff, the named plaintiff, and the motions?

5 I understand that if the class is certified, you are
6 going to want this information. But how does it relate to what
7 we are doing now?

8 MS. MARCUSE: This is Deborah Marcuse.

9 Certainly the full information for 2010 would be
10 directly relevant to pay disparities that are encompassed by
11 what we contend is the full EPA liability period for named
12 plaintiff Kelli Smith and the collective members with whom,
13 again, there is overlap with the Title VII class.

14 With respect to class certification, I don't see how
15 it's not relevant since we are talking about certifying a class
16 for pay disparities where the pay disparities at issue extend
17 back to the beginning of 2009.

18 MS. KATZENSTEIN: And this is Chrissy Katzenstein.

19 I just want to be clear that the liability period in
20 this case commences in December of 2010. To the extent that
21 the statute provides for two years of back pay, that is from
22 the date the charge is filed, that's an issue of damages. So
23 we maintain that that -- this 2009 data, to the extent it has
24 any relevance at all, which we would dispute, it doesn't become
25 relevant until a class is certified.

1 So at this juncture, to assess whether there is a pay
2 disparity from December, 2010 forward, that data has been
3 produced and plaintiffs are able to make that assessment at
4 this juncture.

5 THE COURT: All right. Here is --

6 MS. MARCUSE: Your Honor, this is --

7 THE COURT: I think I have heard enough. I have to
8 tell you, folks, you are talking about something as if -- first
9 of all, you are talking about things that are not in the record
10 on this application, they are from other applications. You are
11 talking about discovery that I am still unclear what has been
12 produced.

13 Are you saying -- Ms. Katzenstein, are you saying you
14 did not produce all of 2010?

15 MS. KATZENSTEIN: We have produced December -- so we
16 have produced the data for everybody employed within the class
17 period. So if somebody is within the class period, their full
18 2010, 2009 --

19 THE COURT: No, I understand that.

20 MS. KATZENSTEIN: -- you know, as far --

21 THE COURT: I understand that.

22 MS. KATZENSTEIN: Right.

23 THE COURT: But I understood that you did something
24 more than that. Because what you say on Page 3 is that you
25 have produced the complete employment and pay data for this

1 population. "This population" being the class and collective
2 members and their male counterparts. Am I mistaken that you
3 have produced the entire record for the male counterparts, as
4 well?

5 MS. KATZENSTEIN: That's correct, Your Honor.

6 THE COURT: All right.

7 MS. KATZENSTEIN: So it's the entire population of
8 sales representatives who have been employed by Merck during
9 the class period. So that would include every male and female
10 sales rep who worked in such role at any point.

11 THE COURT: All right. I want you folks to go back
12 and -- you are going to submit something to me, and there
13 particular issues that I want you to address:

14 One is how far back you believe we should be looking
15 for this discovery, and why. And that calls into question,
16 number one, the limitations or the extension of the time frame
17 under both Title VII and the Equal Pay Act. You can tell me
18 what you want me to understand from the tolling agreements, but
19 I expect you to give me the tolling agreement so I can look at
20 it, and not refer back to something that has previously been
21 briefed.

22 I need to know separately for the Equal Pay Act and
23 Title VII where you are going and how, what plaintiff is
24 looking for, applies to either Ms. Smith, as the named class
25 member, or the motions that we are looking at now and are not

1 simply class specific discovery that we will address if and
2 when the class is certified.

3 I need to have a better understanding of what exactly
4 has been produced, why it has only been produced back to
5 December, 2010, and what the cost of extending that discovery
6 back to January, 2009 would be. I am told that it would be a
7 burden. But, frankly, I do not know what that burden is, we
8 are in an era of proportionality. And for me to evaluate it, I
9 need to know why it is necessary to plaintiff at this stage,
10 and what the burden would be to defendant to produce it.
11 Without those, I cannot evaluate and tell you what a fair
12 result is.

13 So what I would like you to do is to put together a
14 joint letter in which you go through, "Point one, here is what
15 plaintiff is looking for, and why." Response, "Here is why it
16 is not necessary." And in that, you can have subpoints, but I
17 want point/counterpoint. I want you talking about the same
18 issues at the same time. Because I have gone back and forth
19 between these letters multiple times, and it seems to me you
20 are talking about different things. You are citing different
21 sections of statutes, as if they somehow counter each other,
22 and never explaining where you are going with it.

23 So what plaintiff is looking for, what defendant has
24 already produced, why nothing further should be produced or why
25 it should, what the need is versus the cost or burden, and how

1 that tolling agreement fits in. Are we clear?

2 MS. KATZENSTEIN: Yes, Your Honor.

3 MS. MARCUSE: This is Deborah Marcuse.

4 Yes, Your Honor.

5 THE COURT: All right. How long will you need to do
6 this?

7 MS. MARCUSE: When would you like that?

8 THE COURT: Well, that is the next question. How
9 long do you need? I understand a joint letter takes longer.
10 But, frankly, it is much more useful to me to have a
11 point/counterpoint because it is much harder for you guys to
12 talk past each other.

13 MS. MARCUSE: This is Deborah Marcuse.

14 This raises the question of what is to be done with
15 the scheduling of our conditional --

16 THE COURT: We will deal with that next.

17 MS. MARCUSE: -- cert motion --

18 THE COURT: We will deal with that.

19 MS. MARCUSE: Understood.

20 THE COURT: How long do you need to do this letter?
21 You are telling me you need this information for your cert. If
22 you do not need it for the cert, you can go ahead and file your
23 cert motion, the conditional cert.

24 If you need this information, it is going to be held
25 up because I really do not have the information that I need to

1 decide this issue. If you are able to work this issue out, God
2 bless.

3 But if you need me to decide it, you need to give me
4 the information that I need without simply saying the same
5 thing over and over. I need to have a better understanding.
6 So are you telling me that you need this information for your
7 conditional cert motion? Not your class cert, but your
8 conditional cert.

9 MS. MARCUSE: Your Honor, I -- this is Deborah
10 Marcuse.

11 I think in light of the fact that the time is moving
12 forward, I'm not sure that we will want, on the tolling -- on
13 the Statute of Limitations for the opt-ins at this point, I am
14 not sure that we will want to postpone further. I think that
15 we may attempt to file with what we have while we attempt to
16 work this out.

17 However, that brings us to the second batch of data,
18 which is more urgently necessary, I believe, which is the mid-
19 2014 through, let's say, July, 2015. So we would like to try
20 to go ahead and move forward with the conditional
21 certification.

22 I believe that for our part, we could file a joint
23 letter by close of business Wednesday, if that's acceptable to
24 defendants, because we would like to move this forward. Unless
25 defendants are willing to consent to tolling for the EPA opt-

1 ins while we work this out.

2 MS. KATZENSTEIN: And this is Chrissy Katzenstein.

3 I just want to note that up until now, we understood
4 that the data that plaintiffs sought, they believed was
5 relevant for class certification purposes. But we had
6 negotiated a conditional cert with this dispute pending based
7 on our understanding that plaintiffs were really not arguing
8 that they had to have this data for conditional certification.

9 We would ask that we have until Thursday of this
10 week, just to Your Honor's point, that it does take a little
11 time to go back and forth on joint letters. And we cannot
12 consent to any -- any further tolling at this point on the
13 basis of this dispute.

14 THE COURT: All right. Ms. Marcuse, you are saying
15 you do not need this information for your conditional cert,
16 just for your class cert, am I understanding you correctly?

17 MS. MARCUSE: This is Deborah Marcuse.

18 Your Honor, I'm saying that we will move forward with
19 the conditional cert motion without the 2009, and apparently
20 much of the 2010 data at this point just so that we can get
21 something before you in light of defendant's unwillingness to
22 consent to any further tolling.

23 THE COURT: All right.

24 MS. MARCUSE: However, we would ask for a resolution
25 of the issue with the later data that's missing, and a possible

1 additional extension, depending on if that data is to be
2 produced, when it's going to be produced. Because we would
3 like to have the time to look at it.

4 THE COURT: Ms. Katzenstein, what is the problem with
5 updating the data that has already been produced? I understand
6 that there is some burden, but it has to be done. Why can't it
7 be done now? Give them another year of data.

8 MS. KATZENSTEIN: And, Your Honor, I think that we've
9 expressed we're willing to update the data. But doing it
10 repeatedly is burdensome. The volume of data that has been
11 produced is rather significant, so -- it is data for all sales
12 representatives who have worked throughout the 2010 forward
13 class period.

14 THE COURT: I understand that. I am going to stop
15 you right there. I understand that. But Ms. Marcuse is not
16 overreaching here. She is not saying we want weekly or monthly
17 updates. We are talking about a year of data. I think that is
18 an appropriate time frame for an update. So your last
19 production was through July, 2014?

20 MS. KATZENSTEIN: Yes, Your Honor.

21 THE COURT: I would like you to update through -- we
22 are in August now, so update through July, 2015.

23 I am assuming that this is a computer function. We
24 are not in the old days where you are running from ledger book-
25 to-ledger book. And this data has been gathered once, so we

1 are not reinvesting the wheel here.

2 MS. KATZENSTEIN: No, Your Honor. There is some
3 time, though, that it takes to extract the data, so it's done
4 extracting it from the human resources system. We don't do it
5 through generating a report or something similar to that. It's
6 a complete data extraction, and then it's refined so that it's
7 the relevant information for that population. So there is some
8 lag, it's not something that feasible in a matter of days. It
9 does probably take one to two weeks to get the right data just
10 because of the volume and the way that it's pulled out of the
11 human resources system.

12 THE COURT: All right. Let's have it produced by
13 August 21.

14 What does that do to you, Ms. Marcuse?

15 MS. MARCUSE: Your Honor, let me just look at the
16 calendar here. If it's produced by August 21st, that is a
17 Friday. Again, I am torn because I don't want to push the
18 deadline without tolling because the clock is ticking on our
19 collective members.

20 And I'll note that my original proposal to defendant
21 was go ahead and produce the data now. You're making the
22 argument that you shouldn't then have to produce it before
23 class certification. Let's make that argument later then.
24 Let's put that argument before the Judge, but let's not hold
25 this train up --

1 THE COURT: But, Ms. Marcuse --

2 MS. MARCUSE: -- with respect to the conditional
3 search.

4 THE COURT: Ms. Marcuse --

5 MS. MARCUSE: And so I am asking, I suppose, for --
6 if we could have an extension, along with Court-mandated
7 tolling for the interim period between now and, say -- I'm just
8 trying to look at the schedule -- September 11th, that would be
9 great.

10 And that's a short time line for us to look at
11 everything but, again, we are trying to push this forward as
12 much as possible.

13 MS. KATZENSTEIN: And, Your Honor, if I may. This is
14 Chrissy Katzenstein.

15 I just, again, want to note that we've all proceeded
16 under the notion that this data wasn't being sought in
17 connection with conditional certification. Just last week, we
18 talked about an extension to the conditional certification
19 deadline of six additional days. We agreed with that time
20 frame, and we don't see any reason why we aren't able to
21 proceed with the current schedule.

22 With respect to tolling, there -- you know, there are
23 certain circumstances where a court could grant equitable
24 tolling, this certainly isn't one of those. But, you know, to
25 the extent that plaintiffs are requesting it, we think that

1 that is properly done through briefing.

2 MS. MARCUSE: This is Deborah Marcuse, Your Honor.

3 I believe that Chrissy may be misstating because it
4 is very clear. Setting aside the 2009 data, which, again, I
5 don't believe that we fully understood what was missing from
6 2010, so that is something we're going to need to think
7 through.

8 But when we spoke about the 2014 through 2015 data,
9 we made it extremely clear that that was an issue for
10 conditional cert. Because, in fact, the dispute was that Merck
11 said, "Look, you can have one update of the data. Do you want
12 it now or do you want it before class certification?" And we
13 said "We need it both now and before class certification." So
14 just to be clear, that has always been on the table.

15 THE COURT: But I will tell you something, from my
16 perspective, I was told that the conditional certification was
17 really a much simpler hurdle, and it was not my understanding
18 that all of this discovery was going to be needed for the
19 conditional motion.

20 Ms. Marcuse, I am not prepared to order a tolling on
21 this call. If you think it is within my authority to toll, you
22 can brief that. But I am not prepared, based upon what I have
23 before me, to grant your request to toll until you file your
24 motion. So you have a choice to make.

25 MS. MARCUSE: This is Deborah Marcuse.

1 I understand, Your Honor.

2 THE COURT: You have a choice to make. If you want
3 more time --

4 MS. MARCUSE: Yes, but --

5 THE COURT: -- I can give you more time to file your
6 motion. And, frankly, here is the deal: I will give you until
7 September 11 to file your motion. But I am telling you now, I
8 am not tolling anything without briefing on my authority and
9 the reasons why I should exercise that authority.

10 If you want to file your motion tomorrow, you can.
11 By my giving you until September 11, that is a deadline. That
12 is not a hard filing date. You can file that motion as soon as
13 you are ready.

14 I have ordered defendant to provide you with that
15 update. And I have given them the time that they said they
16 needed to put it together.

17 Now I am assuming that it will be provided
18 electronically, and it will be provided -- I do not know how
19 you provide it, Ms. Katzenstein, if it's put on the cloud so
20 that it is instantly accessible, or if it is something that is
21 not delivered electronically. You guys work that out, but I
22 want it in Ms. Marcuse's hands by the 28th, okay?

23 MS. MARCUSE: Okay.

24 MS. KATZENSTEIN: I'm sorry, Your Honor, did you say
25 the 28th? Or --

1 THE COURT: What day did I say? The 21st.

2 MS. KATZENSTEIN: Yes.

3 THE COURT: In her hands by the 21st, all right?

4 And then, Ms. Marcuse, it is up to you. You can file
5 that motion by September -- on September 11. You can file it
6 on September 10. You can file it on September 9. You can file
7 it on any day before then. And I leave it to you to decide --

8 MS. MARCUSE: Understood.

9 THE COURT: -- what you need and what your priorities
10 are.

11 MS. MARCUSE: Yes, Your Honor. Thank you.

12 THE COURT: Okay?

13 MS. MARCUSE: Thank you, Your Honor.

14 MS. KATZENSTEIN: Thank you.

15 THE COURT: So that production will be made by August
16 21, to be received by then.

17 And I will have your joint letter on the discovery
18 issues addressing the issues that I raised by Thursday, August
19 13. And I will deal with it as promptly as I can.

20 MS. KATZENSTEIN: Thank you, Your Honor. And may I
21 just ask --

22 MS. MARCUSE: Thank you, Your Honor.

23 THE COURT: Now do we have any other calls scheduled
24 in this case?

25 MS. KATZENSTEIN: We do not, Your Honor.

1 THE COURT: Then I would like to schedule one. I
2 like to always have our next call scheduled so that we do not
3 lose touch. And so let's plan to have just a status call on
4 October 13. And it will just be a touch base, see if there are
5 any problems, make sure everything is moving smoothly. Let's
6 plan that for 11 a.m. I will ask plaintiff to initiate the
7 call.

8 And we will see where we are then. But obviously
9 that doesn't change any of the things, the tasks that you have
10 undertaken here on this call. Okay?

11 MS. KATZENSTEIN: Thank you, Your Honor.

12 MS. MARCUSE: Your Honor, this is Deborah Marcuse.

13 I have one additional question, having to do with the
14 motion to amend. In light of these adjustments to the
15 schedule, we would ask for a corresponding adjustment to the
16 deadline of the motion to amend until September 14th.

17 MS. KATZENSTEIN: Your Honor, this is Chrissy
18 Katzenstein.

19 I -- this is the first we've heard of any request to
20 the enlargement for the motion to amend. And we don't believe
21 that these two issues are related.

22 So to the extent that that deadline is August 13th,
23 we would ask that that remain. And plaintiffs, of course, may
24 move to -- for leave of Court to amend the scheduling order,
25 but we don't think it's appropriate to do so.

1 THE COURT: I do not need a motion for leave to amend
2 the scheduling order. I am looking at our last schedule.

3 (Pause)

4 THE COURT: I do not know whether you have something
5 in mind, Ms. Marcuse, but I will extend that deadline to seek
6 leave to amend to September 11, which is the next filing date.
7 That would be returnable October 5, all right?

8 MS. MARCUSE: That works, Your Honor. Thank you very
9 much.

10 MS. KATZENSTEIN: And, Your Honor, this is Chrissy
11 Katzenstein.

12 Just one final question on the conditional
13 certification briefing schedule. The parties had previously
14 set the schedule so that defendant would have 30 days to
15 respond, with the reply due approximately 15 days after. Are
16 we able to maintain that same schedule?

17 THE COURT: Yes, but I want it to run from whenever
18 they filed the motion. So when they file the motion, why don't
19 you send a letter in confirming that that is what you have
20 agreed to, all right? So if Ms. Marcuse files her motion on
21 September 1, send me a letter saying, "By prior agreement, and
22 with the Court's approval, our opposition is due in 30 days,"
23 all right?

24 MS. KATZENSTEIN: All right.

25 THE COURT: That way, we do not have a full schedule

1 on the docket.

2 MS. MARCUSE: Yes, thank you, Your Honor.

3 THE COURT: Anything else?

4 (No audible response heard)

5 THE COURT: All right. Thank you very much.

6 MS. MARCUSE: No, Your Honor.

7 MS. KATZENSTEIN: Thank you.

8 THE COURT: Okay. Bye-bye.

9 MS. MARCUSE: Thank you.

10 (Whereupon, at 11:48 a.m., the hearing was adjourned.)

11

12 CERTIFICATE OF TRANSCRIBER

13

14 I, KAREN HARTMANN, a certified Electronic Court
15 Transcriber, certify that the foregoing is a correct transcript
16 from the electronic sound recording of the proceedings in the
17 above-entitled matter.

18

19



20 Karen Hartmann, AAERT CET**D0475 Date: October 15, 2015

21 TRANSCRIPTS PLUS, INC.

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